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In Vino Veritas: Grapes, Greed, and Lawsuits in the Napa Valley

Jennifer Wells

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In Vino Veritas: Grapes, Greed, and Lawsuits in the Napa Valley

*Jennifer Wells**

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If blood will have blood, then Napa will have wine. Or so the sentiment goes. In actuality, a storm has been brewing in Napa County for the past fifteen to twenty years, pitting neighbor against neighbor, developer against environmental organization, and locals against outsiders. The coalescence of numerous elements - increased environmental awareness, hometown preference, a weakened economy, and revolutionary advances in wine-making - has led to numerous disputes in both California and federal courts. The underlying factor of the disputes centers around what for many longtime Napa residents amounts to a destruction of the environment in the bid to develop more wineries. Conversely, vintners see the locals'

* The author is a 2010 Juris Doctor Candidate at the University of California, Hastings College of the Law and commences a doctoral program in history at Brown University in fall 2010. She wishes to thank the 2008-09 and 2009-10 senior editorial boards of *West-Northwest*, with particular thanks due to Jeff El-Hajj, Matthew Summers, and Andrew Chow for their incisive and instructive comments.

opposition as wholly unreasonable and detrimental to the future economic health of Napa County, not to mention an abrogation of personal property rights, as county officials intervene in the disputes and force changes upon the wineries. In assessing how the three different factions - the wineries, the residents, and the Napa County government - interact and resolve environmentally induced wine disputes, important lessons can be drawn in negotiating tactics and the art of exploiting new (and old) technology to better everyone's position.

I. The Environment of the Napa Valley

With 4.7 million visitors each year, the Napa Valley holds the title for the second-most visited place in the State of California after Disneyland.¹ The valley itself stretches some thirty miles northwest from the town of Napa, where the breadth of the valley is at its widest - five miles - to the town of Calistoga, where the valley contracts to one mile.² With tapered hills and lush foliage, the valley's natural topography lends itself to fostering a protective environment capable of growing various types of produce: olives, apples, berries, prunes, oranges, and particularly grapes.³ Indeed, California's maritime climate, with warm days and cool nights, imitates those of the wine-producing regions in Italy and France, which are ideally suited for harvesting the perfect wine grape.⁴ Like the Auvergne region in France, or Sicily in Italy, Northern California saw substantial volcanic uplift two million years ago, which resulted in rich soils that are today breeding grounds for valuable grapes.⁵ The stratified layers created not only fertile earth, but also produced various "soil profiles," thereby offering future winemakers the opportunity to experiment, and exploit, grapes unique to their particular vineyard.⁶ Compounding the soil stratification that resulted due to prehistoric volcanic activity was a dramatic change in sea level.⁷ Notably, San Pablo Bay advanced and retreated on numerous occasions over the course of several thousand years, resulting in the deposition of "bay sediment," comprised of various sands and clays, which silted the southern

1. Napa Valley Chamber of Commerce, http://www.napachamber.com/display_article.html?ID=905 (last visited Mar. 27, 2009).

2. JONATHAN SWINCHATT & DAVID G. HOWELL, *THE WINEMAKER'S DANCE: EXPLORING TERROIR IN THE NAPA VALLEY* 56 (University of California 2004).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

part of Napa Valley.⁸ This served to increase the variation of soil layers and deposits, creating coarse sandstones, marine conglomerates, volcanic basalts, and tuff.⁹ In turn, these varied strata produced soils with different textures, fertility, and water retention.¹⁰

Napa's topography and prehistoric geologic activity have combined to create at least thirty distinct soil types, the vast majority of which produce world-renowned grapes, and eventually wine, due to the soil variations in both structure and composition.¹¹ For instance, the silty clays found predominantly on the floors of the valley and floodplain of the Napa River are both moister and deeper than the dry, gravelly loams found on the slopes of the Mayacamas Range rising out of the valley floor and sheltering the rich soils below.¹² Disparities in soil moisture or fertility do not, however, preclude grape-growing in the less-fortunate areas.¹³ In fact, many small wineries, such as Buehler Vineyards, Shafer Vineyards, and Peju Province Winery, located on drier, rockier soil on the hillsides of the valley, yield extraordinarily rich, flavorful, and highly colorful grapes due to the "struggle" of the grapes to grow in the thin soil.¹⁴

In addition to grapes, the soils also support various flora and fauna. Amongst the creatures native to the Napa Valley are 128 species of birds and over twenty types of waterfowl, as well as deer and rabbit.¹⁵ Some of the local wildlife, including California clapper rail and falcons, appear on federal and state endangered species lists.¹⁶ In addition, settlers who arrived during the nineteenth century frequently herded cattle.¹⁷ Not only did this result in meat exports from the region, but it also gave rise to a substantial dairy business in the Napa and Sonoma valleys.¹⁸ Indeed, cattle ranches competed with small vineyards owned by European immigrants from Italy and Greece as the main industry in Napa during the late nineteenth and

8. B. Lynn Ingram, James C. Ingle & Mark E. Conrad, A 2000 Yr Record of Sacramento-San Joaquin River Inflow to San Francisco Bay Estuary, 24 CALIFORNIA GEOLOGY 328, 331-34 (1996).

9. *Id.*

10. *Id.*

11. See SWINCHATT & HOWELL, *supra* note 2, at 60.

12. *Id.* at 58.

13. *Id.*

14. See Buehler Vineyards, <http://www.buehlervineyards.com/>; Shafer Vineyards, <http://www.shafervineyards.com/>; Peju Province Winery, <http://www.peju.com/>. See also SWINCHATT & HOWELL, *supra* note 2, at 77.

15. Tom Huffman, *The Napa and Sonoma Marshes, Then and Now*, OUTDOOR CAL., Jan.-Feb. 1999, at 11.

16. *Id.* at 10.

17. JAMES CONAWAY, NAPA: THE STORY OF AN AMERICAN EDEN 82 (Houghton Mifflin 1990).

18. Huffman, *supra* note 15, at 9.

early twentieth centuries.¹⁹ Beyond the wildlife that call Napa and its environs home are the native shrubs, trees, and other plant life that populate the valley. In that regard, olives, walnuts, apples, prunes, wheat, oats, barley, cherries, and most obviously, grapes, grow in abundance.²⁰ Moreover, oak grows easily due to a highly adaptable root system that has enabled the tree to flourish in the valley's winter rains and hot summers.²¹ This latter point proves particularly crucial given that various fauna frequently live off of Napa's flora. Deer, for instance, take refuge in thickets of blackberry and shrub oak, while swallows and willets will make nests in oak trees and rushes, respectively.²² Cattle graze on various grasses within the valley, while simultaneously keeping the brush short so as not to overgrow and infiltrate the vineyards.²³ Thus a symbiotic relationship exists between the flora and fauna of Napa Valley; the animals rely upon the plants for life, while the plants depend upon the animals for maintenance.

II. Forbidden Fruit: A Brief History of the Napa Valley

The valley's rich natural environment made Napa an obvious place to settle following the Gold Rush in 1849. Well over one-quarter of the Napa Valley's population in 1880 was foreign-born, while another quarter consisted of Mexican farmers, with the remainder Easterners who had migrated westward after the Gold Rush.²⁴ In many ways, the individuals were classic pioneers with energetic spirits. Their collective ingenuity, combined with the winemaking experience of the Europeans, the capital of the Easterners, and the labor and knowledge of the land of the Mexicans, enabled the residents to begin producing wine. George Yount, whose namesake is commemorated for time immemorial in the Napa Valley town of Yountville, established the first vineyard in 1855.²⁵

For the next ninety years, the Napa Valley produced cabernets and chardonnays on relatively small vineyards owned by families with names such as Krug, Niebaum, Rutherford, Beringer, and Mondavi that remain

19. CONAWAY, *supra* note 17, at 82.

20. *Id.*; see also WILLIAM HEINTZ, CALIFORNIA'S NAPA VALLEY: ONE HUNDRED SIXTY YEARS OF WINEMAKING 72 (Scottwall Associates 1999).

21. Denise Levine, *Planting Oaks*, UNIVERSITY OF CALIFORNIA MASTER GARDENERS, http://groups.ucanr.org/mgnapa/Articles/Planting_Oaks.htm.

22. Kimberlyn Williams, Lawrence J. Westrick & B.J. Williams, *Effects of Blackberry (Rubus discolor) Invasion on Oak Population Dynamics in a California Savanna*, 228 FOREST ECOLOGY AND MANAGEMENT 187, 187-196 (June 15, 2006); see also Huffman, *supra* note 15, at 10.

23. HEINTZ, *supra* note 20, at 120.

24. *Id.*

25. HEINTZ, *supra* note 20, at 28-29.

synonymous with California wines today.²⁶ Yet despite the creation of the Grape Grower's Association of Napa, Sonoma, and Solano Counties in 1871, and various viticultural clubs and associations that similarly organized during the late eighteenth and early twentieth centuries, Napa's wines remained decidedly provincial.²⁷ Although San Francisco became interested in "native wines" after the Civil War had effectively blocked the importation of French wines, markets in the East and true wine connoisseurs still preferred European (particularly French) libations until the early twentieth century and even after Prohibition.²⁸ Indeed, until 1948 with the establishment of the Napa Valley Vintners, which joined seven wineries together in an effort to promote Napa's reds and whites as world-class wines good enough to compete with their European counterparts, the wine "industry" in the Napa Valley still appeared extraordinarily honky-tonk.²⁹ The Napa Valley Vintners, however, radically altered the techniques used in that production and the marketing of California's wines so that by "the late 1940s, the Mondavis, Christian Brothers, Louis Martini, Beringer, and others had entered the premium wine market, and they intended to stay there."³⁰ Stay they did. And in the process of elevating themselves into the luxury wine market, the Napa Valley Vintners also forever changed the face of the Napa Valley.

III. The Trouble with Money: Change Comes to the Napa Valley

In *The Far Side of Eden: New Money, Old Land, and the Battle for Napa Valley*, James Conaway astutely captures this transition from honky-tonk valley dotted with family wineries to the multi-million dollar tourist mecca of wine tastings and Michelin-rated restaurants that characterizes Napa today.³¹ Conaway argues that "the distillation of half a century of affluence and emphasis on the material had altered the landscape and, in some cases, the people" to create a valley that compromised longstanding commitments to environmental protection and agricultural preserves, and instead embrace development and the wine industry, as opposed to winemaking.³² The distillation of culture serves as one important consideration in assessing why contemporary Napa is a hotbed of environmental dispute, as many local

26. See HEINTZ, *supra* note 20, at chapters three through seven for a comprehensive history of winemaking in Napa between 1880 and 1940.

27. See *Id.* at 79-81 for a discussion on various associations.

28. *Id.*

29. *Id.* at 306.

30. *Id.* at 313.

31. JAMES CONAWAY, *THE FAR SIDE OF EDEN: NEW MONEY, OLD LAND, AND THE BATTLE FOR NAPA VALLEY* 87 (Houghton Mifflin 2002).

32. *Id.*

residents regard themselves as the vanguards of environmental protection against the hordes of developers pouring in from Texas and Florida.³³ But other important factors must first be explored in order to illuminate the totality of the valley's cultural denigration and the various legal remedies to which the varying sides have resorted. In particular, an analysis of the internal and external relationships of three key strands - the winemakers, the residents, and the Napa County government - reveals the peculiar culture underlying the Napa Valley and illustrates why the wine industry has generated such environmental controversy for its effects on the valley.

IV. The Cast of Characters

The old-time Napa Valley wine families include many of those aforementioned: Krug, Niebaum, Rutherford, Beringer, Christian Brothers, and Mondavi, as well as smaller vineyards such as Frog's Leap and Ferrier, owned (and typically staffed) by one or two individuals. In addition to old wine families, there are also longtime Napa residents, many of whom trace their roots to the original settlement of the valley.³⁴ Bill Davies, whose family owns the Schramsberg winery first established in 1862, described this group of people as a mix of "rednecks," "Mexicans," and "old-timers, like the descendants of Italian immigrants who 'don't compete well' in the new, fashionable Napa, and whose involvement in grapes and wine is 'a romantic, hobby, personal interest kind of thing.'"³⁵ These individuals were initially concerned by Napa's increased growth in the 1960s as wealthy San Franciscans and denizens from the East Coast (particularly Florida) snapped up second homes worth millions.³⁶ Together, however, both the second homeowners and the old-time residents, who will be collectively referred to as "longtime residents" or "neighbors" for the purposes of this note, formed organizations such as People for Open Space, the Upper Napa Valley Association, and, most importantly, the Agricultural Preserve.³⁷ They also lobbied local and state officials to establish stricter environmental, conservation, and property laws in the area, so as to protect against reckless development and rampant tourism.³⁸

In sharp contrast to the longtime residents stand the new buyers. This group is as varied as the longtime residents, but generally includes those who have purchased land in Napa with the aim solely of developing it into a

33. Christina Duff, *A Family's Adventures Underground*, WALL ST. J., Jan. 2, 2009, at W8.

34. *Id.*; see also CONAWAY, *supra* note 31, at 88.

35. CHERYLL AIMÉE BARRON, *DREAMERS OF THE VALLEY OF PLENTY: A PORTRAIT OF THE NAPA VALLEY* 271 (Scribner 1996).

36. CONAWAY, *supra* note 17, at 82.

37. *Id.*

38. *Id.*

winery.³⁹ Throughout this note, these individuals will be referred to as “vintners” or “winemakers.” In many instances, multi-national or European firms are those behind the big land-grab.⁴⁰ However, there have been a few notable exceptions, in which wealthy Americans or European investors purchased multi-million dollar swathes of land in the hopes of founding a new winemaking ascendancy to either compete with the older, more established wineries, or just out of pure ego. A prime example of this rare combination of hubris and wine affinity are Dr. Julio and Amalia Palmaz, two Texans who invested \$20 million in 1997 in Cedar Knoll, a winery that had gone bust during Prohibition.⁴¹ The Palmaz’s experience provides a useful paradigm for assessing the clashing interests in the Napa Valley of vineyard developers and local, anti-development residents and their attendant organizations.

These two groups, the local residents and new vintners, are the predominant “sides” in the disputes that have surfaced in the past several years concerning development in Napa. The Napa County government, however, also exercises considerable might in determining the course of development, and can be considered a third faction in the wine wars. It is vital to remember this distinction when assessing the various efforts of the longtime residents, in conjunction with assistance from the local and state governments, to curb future growth in Napa and protect the valley’s priceless environment.

V. The Fear of the Local Residents

The ultimate fear of the local residents is the wide-scale development of previously bucolic pieces of land.⁴² The most important issues raised by developing land into large wineries include: access to water; the clearing of brush, oak trees, and other flora needed to sustain local wildlife; building new roads or widening old roads to gain access to wineries; and compliance with local building codes.⁴³

Longtime residents first sought to deal with these problems in 1967 with the establishment of the Agricultural Preserve.⁴⁴ The basic premise of the Agricultural Preserve was to ensure legal protection for productive land.⁴⁵ The Agricultural Preserve’s earliest outlines banned new building

39. Duff, *supra* note 33.

40. *Id.*

41. *Id.*

42. *Id.*

43. Nina Schuyler, *Serving the Wine Industry: Wine Law, a Growing Field*, 33 SAN FRANCISCO ATT’Y 32, 33 (2007).

44. CONAWAY, *supra* note 17, at 83.

45. *Id.*

construction on less than twenty acres of land.⁴⁶ With the assistance of local politicians and state representatives, the Agricultural Preserve passed in the Napa County General Plan of 1968.⁴⁷ The General Plan hinged upon a “land-use” clause that provided an underpinning for all future development: The area within the Agricultural Preserve would be protected from future development on sites under forty acres.⁴⁸ This clause proved particularly vital in ensuring that both the basic premise of the Agricultural Preserve and the limited development campaign would continue should the composition of the Napa County Board of Supervisors change and members with pro-development tendencies take the places of those who sought to protect Napa’s environs.⁴⁹

Additions to the General Plan throughout the 1970s and 1980s saw supplementary safeguards put in place to protect the land. Interestingly, and perhaps uniquely, an aggressive, pro-growth element did not exist.⁵⁰ Indeed, in drafting the General Plan that currently provides the rules and regulations for Napa’s wineries and development, the two sides can best be categorized as “limited growth” and “anti-growth,” but most certainly not “pro-growth.” The underlying reason for this is that all of the residents engaged in this particular battle were locals, but with varying ideas about how to accurately deal with Napa’s expansion during the late twentieth century. The split in opinion in determining both the size and scope of land development in Napa occurred over the definition of a “winery.”⁵¹ The limited growth contingent, comprised of older, established wineries such as Beringer, Sutter Home, and Mondavi, argued that all existing wineries were to be grandfathered in an “overlay zone” superimposed on these wineries.⁵² This ultimately served to legalize all activities that occurred in existing wineries, particularly in terms of how they operated and made use of the land.⁵³ Importantly, the provisions were vague enough that older vineyards had room to maneuver and expand their operations if needed.⁵⁴ On the other side were the decidedly anti-growth proponents, including the Napa Valley Grape Growers (a collection of small wineries producing wine only sold locally, not nationally or internationally) and the Farm Bureau.⁵⁵ This anti-growth group wanted to impose limits on new wineries *and* prohibit the

46. *Id.*

47. *Id.* at 255.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Napa County General Plan, Oct. 23, 1992, on file with author.

53. *Id.*

54. CONAWAY, *supra* note 17, at 404.

55. *Id.*

expansion of existing wineries.⁵⁶ Further, by mandating a fixed percentage of Napa Valley grapes to be used in Napa Valley wine production, the anti-growth faction's proposals would automatically limit the expansion of existing vineyards and the creation of new wineries.⁵⁷

The Board of Supervisors ultimately favored the anti-growth faction.⁵⁸ In its decision, the board created a 75 percent Napa Valley grape requirement for the creation of new vineyards and the expansion of existing wineries.⁵⁹ Any winery established after 1991 was also prohibited from giving *public* tours or tastings.⁶⁰ Thus, while the decision proved victorious for the anti-growth party and demonstrated the general desire of Napa's Board of Supervisors to appease longtime residents, loopholes riddled the ultimate outcome. For instance, *private* tours and tastings were allowed should someone phone the winery and arrange for such an event. Moreover, if a buyer arrived in Napa and purchased forty acres, he might have been limited in building on the *surface* of the land, but he would not be prohibited constructing his winery below ground. Indeed, by cultivating enough grapes to meet the 75 percent requirement on the 20-40 acres that a buyer from, say, Texas purchased in Napa, he could construct an underground cave where the winery itself operated and produced and all the wine. It was this stunning development of underground wineries and clever manipulation of the land, both of which were made possible by enhanced winemaking technology that proliferated in the Napa Valley during the late 1990s and early 2000s, that set off the current crop of conflicts.

VI. New Regulations, New Developments, and New Disputes in Winemaking

Like an irony out of a Greek tragedy, the advent of Napa County's Viewshed Protection Ordinance in December 2001 coincided with the development of a series of new technological advances in winemaking. The result was a dramatic irony which only Sophocles could truly appreciate; both the ordinance and the advances in winemaking could work together in an effort to promote the protection of Napa's environment, while simultaneously making use of the latest technology. People being people, however, things did not work out in such a smooth manner. Moreover, the latest series of Napa County ordinances in tandem with regulations from the 1980s effectively worked against the new technological advances. The Napa County Board of Supervisor's reluctance to grant permits to most

56. *Id.*

57. *Id.*

58. Napa County General Plan, *supra* note 52.

59. *Id.*

60. *Id.*

people seeking building permits has caused new rows between winegrowers and the local government and environmental groups. Similarly, winemakers have learned how to skillfully manipulate the Viewshed Ordinance in order to continue the sort of wide-scale development that the regulation clearly did not intend. Such chicanery has set off new waves of environmental unrest.

The passage of the Viewshed Protection Ordinance by Napa County's Board of Supervisors in December 2001 enshrined an environmental idealism that had grown throughout the Napa Valley since the late 1980s.⁶¹ As one winemaker remarked about the generally "green" nature of the Valley, "If I weren't growing grapes, I'd probably be a tree hugger."⁶² Or, as *The New York Times* astutely commented in a 2002 article highlighting the ill-will that the recently enacted ordinance had generated, "On the one side are green, anti-urban alumni of the University of California who have come to Napa to live. On the other side are green, anti-urban alumni of the University of California who have come to Napa to farm."⁶³ The Viewshed Ordinance itself reflects this "green" commitment to the environment with which the majority of valley denizens - whether residents or grape growers - can identify. The regulation itself is fairly simple and straightforward: New buildings on Napa County's hillsides must be camouflaged from public view in their design, placement, and landscaping.⁶⁴ The purpose of the Viewshed Ordinance is to "protect and preserve views of major and minor ridgelines from designated public roads" and also to "minimize cut and fill, earthmoving, grading operations and other such man-made effects on the natural terrain" to ensure that finished construction projects are compatible with the existing land and character.⁶⁵

Despite the innocuous language of the regulation, it has the unique designation of having been at the center of nearly every wine-based land dispute in Napa since 2001.⁶⁶ The chief reason for its ubiquitous appearance in adversarial actions is explained in part by the advent of new winemaking techniques employed by Napa Valley vintners. The plans at Georges de Latour Private Reserve, a new Napa winery that began production in 2008

61. NAPA COUNTY, CAL., CODE OF ORDINANCES ch. 18.106 (2001), available at http://library.municode.com/HTML/16513/level2/T18_C18.106.html.

62. Charlie Smith quoted in Joseph Kahn, *Legal Fighting in Paradise: Fury Over Napa Vineyards*, N.Y. TIMES, April 14, 2002, <http://query.nytimes.com/gst/fullpage.html?res=9401E2D9133CF937A25757C0A9649C8B63&sec=&spon=&scp=11&sq=Napa%20Valley%20lawsuits&st=cse> (last visited Mar. 5 2009).

63. See Kahn, *supra* note 62.

64. NAPA COUNTY, CAL., CODE OF ORDINANCES, *supra* note 61.

65. *Id.*

66. Nathan Crabbe, *Winery Gets Go Ahead Under Viewshed Rules*, NAPA VALLEY REG., Apr. 19, 2002, available at <http://www.napavalleyregister.com/articles/2002/04/19/news/export32018.txt> (last visited Mar. 4, 2009).

and started to offer tastings in the spring of 2009, illustrates the vintners' newest methods: twenty-three state-of-the-art oak and stainless steel fermenters in an underground chamber equipped with cooling and heating capability; a special area created for barrel fermentation, replete with rollers for the barrels that enable the casks to spin in place during the fermentation so as to improve the taste of the wine; and climate control throughout the facility to enable extended maceration and a consistent temperature required to "produce wines of gentle extraction and finesse, with a focus on tannin management."⁶⁷ Georges de Latour chose to construct the winemaking facility at an existing building on its grounds.⁶⁸ Irrespective of where Georges de Latour houses its wine techniques, the sheer size and scope of modern wine production is made abundantly clear in the description of its operations. Importantly, however, de Latour's adherence, in spite of its magnificent size, to the Viewshed Ordinance indicates that it is possible to follow local environmental regulations while building new wine-making operations.

Similarly, commentators hailed the Napa County Planning Commission's approval of Pahlmeyer Vineyards in 2002 as the "test case" for the Viewshed Ordinance.⁶⁹ The Napa County Planning Commission's unanimous approval of the construction of a 40,000-square-foot winery with an additional 16,000-square-foot outdoor patio for tastings won acclaim from many, as the vineyard's approval illustrated the ability to harmonize new technological developments in winemaking with the wishes of local neighbors that Napa remain a bucolic environmental haven.⁷⁰ Reports and neighbors suggest that development of the property into a 100,000-gallon per year winery was possible due to its "hidden" location behind the vineyards, thus obscuring it from roadside views.⁷¹ Further, the materials used to build the winery were non-reflective and natural, while outside lighting was kept to a bare minimum.⁷² These various steps ensured both that Pahlmeyer Vineyards existed within the confines of the law, and more importantly, that the Viewshed Ordinance could effectively address both wine and environmental interests. Despite the fears of some nearby residents that the Napa County Planning Commission's approval of the winery would "gut" the Viewshed Ordinance and scar the hillsides as bulldozers ploughed away the earth to make room for vineyards, the

67. *Beaulieu Vineyard Will Create Facility for Iconic Reserve Wine*, NAPA VALLEY REG., Oct. 19, 2007, <http://www.napavalleyregister.com/articles/2007/10/19/features/wine/doc47181f769b64d314379800.txt> (last visited Mar. 4, 2009).

68. *Id.*

69. Crabbe, *supra* note 66.

70. *Id.*

71. *Id.*

72. *Id.*

Pahlmeyer Vineyard went on to become one of Napa's best-regarded wineries by 2008.⁷³ Moreover, Pahlmeyer's decision to donate fifty-seven acres of his winery's land to the Napa Valley Land Trust ameliorated the concerns of any disgruntled neighbors desiring environmental protection.⁷⁴

Notwithstanding the continued ability to construct above ground in accordance with the Viewshed Ordinance, the expansion of winery operations and the vast amounts of space required to produce wine in accordance with the latest technological updates has resulted in many wineries going "underground" since 2002. The single-largest factor driving the subterranean movement is inherently simple: Most new vintners have found that cave permits are easier to obtain than their above-ground counterparts, and they are the easiest way to adhere to the Viewshed Ordinance.⁷⁵ Despite such advantages, and although many individuals in Napa may have favored speakeasy wineries during Prohibition, subterranean monoliths have come to occupy a tenuous place in Napa's heart and mind. On the one hand, underground wineries allow winemakers to employ the latest technologies without fear of violating local ordinances. Yet these wineries also wreak environmental havoc, particularly during their construction as the removal of brush, shrubbery, and trees results in lost habitat for indigenous fauna, soil erosion, and polluted streams. Accordingly, development regulations have abounded in Napa and Northern California during the later decades of the twentieth century and into the new millennium due to an onslaught of environmental activism and green fervor.

The saga of Palmaz Vineyards best illustrates this dilemma in squaring modern winemaking technology and environmental protection. Owned by Dr. Julio and Amalia Palmaz, the vineyard's winemaking facilities are similar to those of Georges de Latour in both their sleek appearance and technologically advanced methodology.⁷⁶ Palmaz Vineyards prominently boasts an entirely computer-controlled winemaking process, complete with a destemmer and sorting table for the grapes, as well as a trapdoor through which the grapes drop into one of twenty-four stainless steel fermentation tanks, which in turn rotate on a carousel.⁷⁷ Following this process, the wine flows through hoses into fourteen larger tanks that both blend and bottle the wines.⁷⁸ After the bottling is completed, the wine proceeds on conveyor

73. James Laube, *Pahlmeyer Chardonnay Napa Valley* 2006, WINE SPECTATOR, Aug. 28, 2008, at 129.

74. Paul Franson, *Many Napa Vineyards on the Market*, WINES & VINES, June 19, 2007, at 54.

75. *Id.*

76. Duff, *supra* note 33.

77. *Id.*

78. *Id.*

belts, arranged in a pinwheel, to various "aging caves."⁷⁹ If it all sounds complex, it is. In fact, the Palmaz wine operation proved so intricate that the couple decided to go underground in constructing their state-of-the-art facility.⁸⁰ The Palmazes maintain that their reasoning for underground operations - something of a sweet irony given that the land upon which Palmaz Vineyards sits is the site of the old Cedar Knoll winery, abandoned until the Palmazes purchased it eighty years after its failure due to Prohibition - is that cave permits are far easier to obtain in Napa Valley than above-ground permits.⁸¹

The Palmazes however, did not wait for the complete consent of the Napa County Planning Commission prior to beginning their initial construction efforts.⁸² Instead, they began clearing shrubs and oak forests to make way for their grapes.⁸³ One neighbor, Louise Dunlap, was strolling along her property one day when she "[saw] the sky open up where an oak forest had once been," and subsequently convened a meeting between thirty neighbors and the Palmazes.⁸⁴ The angry discourse only increased at the Napa County Planning Commission's hearings, but despite protests from the neighbors that the Palmazes had cleared brush to mark their property and expanded a road that cut along the hillside, "the county eventually approved the Palmaz's permits, finding no cause to deny them."⁸⁵

Although this victory, and subsequent construction of the 100,00-square-foot cave-based winery operation, may appear a setback for environmental concerns in Napa Valley, the legal troubles that the Palmazes found themselves in following the commission's approval illustrate that even if cave permits are easier to obtain in Napa because they do not require strict adherence to the Viewshed Ordinance, wineries cannot evade the law. In April 2007, Napa County filed suit against the Palmazes, alleging that the couple had planted 750 vines too close to a creek, and that the Palmazes had failed to obtain permits to repair two bridges on the property.⁸⁶ The county and vineyard subsequently reached a settlement in late summer of 2007, in which the Palmazes paid a fine of \$550,000, removed hundreds of vines near the stream, and planted 160 new oak trees on their property.⁸⁷ The total cost for the legal battle: \$1.25 million.⁸⁸ Palmaz

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* There is no explanation as to why the Palmazes did not wait for full approval of the winery's plans by the Napa Valley Planning Commission.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

Vineyards is now complete, and producing 6,000 cases of cabernets and 1,000 cases of white wines per year that sell from between \$32 to \$150 per bottle.⁸⁹ Tensions remain, however, between the Palmazes and their neighbors over the construction of the 100,000-square-foot wine cave that altered the above-ground landscape. Amalia Palmaz reflects that, "I am not the darling of the place," a sentiment echoed in the words of Louise Dunlap, "They are not my favorite neighbors."⁹⁰

VII. Making Progress in the Land of Eden: The Permit Process and Dispute Resolution

These vignettes encompass the spectrum of dispute resolution methods in wine and environmental conflicts in Napa Valley. The vintners moved in with their new technology, the neighbors became incensed, and the county intervened by either approving the wineries' construction or filing a lawsuit against the vintners. Understanding how and why the wineries employed the two different permit processes to both their benefit and that of the environment (or, contrarily, to the detriment of the environment) yields important lessons for future winery development in Napa Valley. In understanding the failures and triumphs of local environmental regulations in Napa and their effects on winemaking within the context of dispute resolution, more sustainable practices may result that will enable Napa's storied place in the American imagination to continue forward without so much animosity.

As indicated earlier, vintners currently have two options to obtain permits and construct their wineries. The first is an above-ground permit that must comport with the Viewshed Ordinance. The second is to obtain a below-ground cave permit. Although this must also adhere to the Viewshed Ordinance, the standards prove far more relaxed because vintners construct the caves underground. In deciding which permit to obtain, many vintners in recent years have opted for the latter because of three important considerations: ease of obtainment; substantially reduced costs; and greater flexibility in how to construct the winery.⁹¹ Each of these three factors will be assessed and compared to the relative costs and benefits of the Viewshed Ordinance. An analysis of the advantages and pitfalls of both options illustrates why such contentions remain and considers how to alleviate them.

88. *Id.*

89. *Id.*

90. *Id.*

91. Angela Frucci, *The Fruits of Burrowing: In Napa Valley Caves Are More Than Places to Store Wine*, S.F. CHRONICLE, Mar. 6, 2005, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/03/06/REGM2BK1G51.DTL> (last visited Mar. 4, 2009).

In nearly every survey and article conducted about winery construction in Napa since the 2001 passage of the Viewshed Ordinance, vintners have largely cited the relative ease of obtaining a cave permit as the single-biggest reason in constructing underground wineries.⁹² While an above-ground permit may take years, numerous discussions with neighbors, and dozens of hearings before the Napa Valley Planning Commission, a winemaker can obtain a below-ground (or cave) permit in a matter of months.⁹³ Such was the case of Bob and Louise Dye, both of whom wanted a cave permit due to environmental awareness and cost effectiveness.⁹⁴ Following their 2004 application to the Napa County Planning Commission, the couple had a cave permit by year-end, and their only true hindrance to construction was waiting for a cave construction company due to the ready demand for subterranean wineries in Napa.⁹⁵ Jim Curry, owner of a cave construction firm, noted that the Napa County Planning Commission is “friendly” in granting cave permits because “rarely is there an environmental issue. To build a building to store wine is a highly regulated matter. To build a cave is a much simpler process from the standpoint of permits.”⁹⁶ This suggests that Napa County, in its own commitment to maintain the environment through the various mechanisms, coalitions, and ordinances that have characterized its history, attempted to strike a balance between the two warring factions. The county has arguably “promoted” new wineries that favor cutting-edge technology by granting the cave permits, yet it has also ensured the continued protection of the environment in requiring that projects such as the Plamaz’s and Georges de Latour’s remain below-ground, rather than above. Furthermore, the planning commission’s reticence to approve Pahlmeyer’s vineyard unless he dedicated a portion of his property to the Napa Valley Land Trust denotes the county’s generally “green” spirit and commitment to the environment.

In addition to the ease in acquiring underground permits, many vintners prefer cave permits because both permission and constructing the winery prove less expensive. As reflected upon earlier, the length of time to acquire an above-ground permit can last for several years, which necessarily increases the attendant administrative and legal costs. Similarly, the planning commission grants most cave permits within the span of a year and these permits are also less expensive to obtain.⁹⁷ Additional, hidden costs also frequently result during the construction process for above-ground wineries, as the vintners’ attempt to adhere to the Viewshed

92. See Frucci, *supra* note 91; see also Crabree, *supra* note 66.

93. Frucci, *supra* note 91.

94. *Id.*

95. *Id.*

96. Jim Curry quoted in Frucci, *supra* note 91.

97. Crabbe, *supra* note 66.

Ordinance's requirements that natural materials be used in construction and that the building itself remain hidden from public view. These additional expenses increase the construction cost of a winery by two to three times the amount spent on an underground winery.⁹⁸ By most estimates, that would have placed the Palmaz's \$500 million underground winemaking extravaganza at a whopping \$1 billion to \$1.5 billion above ground!⁹⁹ Thus, for the Palmazes and Dyes, substantial savings can result through cave construction.

The third consideration for many vintners in building underground is the increased flexibility it provides. Although caves require that an army of engineers from both corporate firms and the Occupational Safety and Health Administration review the plans in order to ensure that hillsides will not give way and collapse on the winemaking operations, building underground ultimately enabled people like the Palmazes to construct a facility ten times larger than any above-ground winery.¹⁰⁰ Given the advent of new, state-of-the-art wine technology that necessarily requires more space, caverns are a much sought-after method in wine production. Such advanced technology has the added benefit of requiring little upkeep, and even prior to the 2000s, caves required minimum maintenance, power, and cooling.¹⁰¹ In that sense, the cave also provides an inherently efficient method of wine production. Furthermore, there is a natural benefit that subterranean winemaking operations offer, as architect John Lail maintained, "Caves make all the sense in the world. They're perfect for wine, which needs cool storage, no light, and a certain amount of moisture in the air."¹⁰²

Given these three, favorable benefits to cave permits and construction, few, if any, reasons seem to exist for winemakers to obtain above-ground permits and run into the thicket of hearings, disputes, and controversies that will result in meetings with the Napa Valley Planning Commission, neighbors, and the general public. Yet just because it is simpler, cheaper, and more efficient to obtain a cave permit, the construction itself creates environmental havoc that raises the fury of both neighbors and Napa County.

Such ire was most spectacularly witnessed in the Palmaz's underground winery, yet dozens of other examples abounding in recent years highlight similar problems. In all instances of cave construction, vast amounts of shrubbery and oak forests must be cleared in order to begin

98. *Id.*

99. Frucci, *supra* note 91.

100. *Id.*

101. *Id.*

102. *Id.*

digging into the hillsides.¹⁰³ Although cave construction spares thousands of square feet of shrubbery on the earth's surface that would otherwise be swallowed up by winemaking facilities in above-ground building schemes, the effects are still pronounced. Indeed, such clearances lead to a devastation of not only the local flora and those fauna relying upon the shrubbery and oak trees for sustenance, but also induce mourning (and fury) amongst resident environmentalists. When locals sued Napa County for approving the plans of the Tom Eddy Winery, one allegation in the complaint bemoaned the loss of fifty-six oak trees that the project promised to fell, and further maintained that the desolate, barren landscape would prove aesthetically displeasing.¹⁰⁴ Eddy (who was named a co-defendant alongside Napa County) countered in the response that he would "replant" the trees with acorns from the fifty-six felled oaks, and further noted that if neighbors wanted more lush vineyards, "that would mean knocking down more trees."¹⁰⁵ Unsurprisingly, the dispute remained at an impasse for several years before finally settling for an undisclosed sum out of court.¹⁰⁶

Perhaps even more worrisome beyond the immediate devastation of flora and fauna as a result of the construction of either above or below-ground wineries are the effects on human development. Such a quandary is best highlighted in the clearing of brush for the Viader Winery, where "young vines protruded from a steep slope deprived of ground cover, the soil free not just of pebbles now but also of native plant life."¹⁰⁷ The year that the Viader Winery cleared the hillsides for development, strong winter storms moved in off the Pacific and the heavy rains ultimately led to mudslides.¹⁰⁸ Due to the lack of shrubbery, the earth gave way, causing homes and vineyards to slide down the hillside, leaving a trail of devastation in their path before ultimately settling in the reservoir that supplies St. Helena with its water.¹⁰⁹ Questions arose over the potability of the drinking water, as well as the continued viability of aquatic life in the reservoir.¹¹⁰ However, the

103. Paul Franson, *Wine Caves Continue in Popularity*, WINE BUSINESS MONTHLY, June 15, 2005, available at <http://www.winebusiness.com/wbm/?go=getArticle&dataId=38872> (last visited Mar. 5, 2009).

104. Nathan Crabbe, *Napa County Sued Over Winery Approval*, NAPA VALLEY REG., Jan. 20, 2002, available at <http://www.napavalleyregister.com/articles/2002/01/20/news/export20316.txt> (last visited Mar. 5, 2009).

105. *Id.*

106. *Id.*

107. CONAWAY, *supra* note 31.

108. Thomas McNamee, *Sour Grapes*, N.Y. TIMES, Oct. 20, 2002, <http://query.nytimes.com/gst/fullpage.html?res=9E06E2D6163AF933A15753C1A9649C8B63&sec=&spon=&scp=10&sq=Napa%20Valley%20lawsuits&st=cse> (last visited Mar. 7, 2009).

109. *Id.*

110. *Id.*

vineyard's owners ultimately escaped with a small fine, which induced obvious wrath from the local residents.¹¹¹ Neighborly aversion towards vintners is thus not surprising in modern Napa, regardless of whether or not the self-styled Bacchus' have chosen to build above or below-ground wineries. In either instance brush and shrubs must be cleared, resulting in a barren hillside susceptible to mudslides and more sustained periods of drought.

VIII. All for One and One For All: An Assessment of the Factional Interests

Assessing both the positive and negative ramifications yields a sharp juxtaposition that any individual seeking to understand the complex web of factional interests present in the modern Napa Valley must disentangle. For while the cave wineries appear, facially, to be more conducive to environmental goals and reform, they involve just as many environmental dilemmas as their above-ground counterparts. Only through parsing the negative effects of each method and assessing the positive outcomes does a clearer picture emerge. While the above assessment quite obviously accomplishes this through a series of vignettes concerning wineries built above-ground and underground alongside explanations about how such vineyards have affected the environment, the final step of the analysis involves an assessment of precisely *whose* interests are negatively or positively affected by the various methods of winemaking. In the following sub-sections, therefore, attention will be given to the three main factions in modern Napa Valley wine disputes - the vintners, the county, and the neighbors - and what they all wish to see happen to serve their goals and desires. By thus assessing their attendant interests, a more cohesive, functional plan for future sustainable, environmentally friendly development can result.

A. The Interests of the Winemakers

In its mission statement, the Napa Valley Vintners Association clearly articulates that its goal "[is] to promote and protect the Napa Valley Appellation."¹¹² In the Vintners Association's mind, this goal can be achieved through a vision in which "the Napa Valley will be recognized as a winegrowing region second to none [and] the Napa Valley will be preserved and enhanced for future generations."¹¹³ These dual goals, however,

111. *Id.*

112. Napa Valley Vintners Association, *The Mission of the Napa Valley Vintners* (1943), *available at* http://www.napavintners.com/about/ab_1_mission.aspx (last visited Mar. 5, 2009).

113. *Id.*

frequently conflict. The real struggle for the winemakers of Napa Valley is both to produce world-class wine, while also respecting the scenic, environmentally unique valley in which they live. For the vintners, this raises several considerations. Foremost, they require enough land to produce their wine in accordance with the most advanced wine-making techniques available. Secondly, they must harness this land in economically efficient ways so as to realize a profit. Third, they must promote their vineyards and wineries in order to attract tourists and wine connoisseurs alike. While certainly not exhaustive, these three considerations are some of the most important, and will hopefully serve as a springboard for future debate.

In assessing these three interests, it is abundantly clear that in order to fulfill both the Vintners Association's goals of wine production and environmental sustainability, modifications must be made to the existing laws and the changes must be strictly enforced. In order to harness the maximum amount of land to exploit popular technology, cave-based permits may be favored because they allow for more development than current land-based permits. Furthermore, as alluded to earlier in the analysis, the underground wineries give vintners the opportunity to make use of the most current winemaking technology available without fear of aesthetically affecting the hillsides in contravention of the Viewshed Ordinance. However, given the Viewshed Ordinance's wide-ranging provisions combined with the earth-burrowing that quite clearly results in constructing subterranean caverns, cave-based wineries *will always* affect the surface of the earth, and thus arouse the ire of neighbors. Thus, by relaxing the Viewshed Ordinance for those wineries that have obtained cave-based permits yet upholding the Viewshed Ordinance in the strictest sense for those grape growers who choose to build above ground, a tenuous middle ground may exist.

Such a proposal also helps the winemakers to realize their second interest: turning a profit. Given that cave permits are more cost-effective to obtain and that cave-based wineries prove less expensive to build, the use of more underground permits will help wineries to cut initial construction costs. As previously mentioned, it costs two to three times more to build ground-level wineries than to construct underground operations.

In building wineries below ground, vintners can also attract more tourists and wine connoisseurs to their estates, thereby fulfilling the third consideration. The "wow" factor of an underground winery should never be underestimated, as evidenced by the hordes of tourists flocking to Palmaz Vineyards and the scores of articles (nearly twenty) commenting on the marvel since the winery's completion in 2008.¹¹⁴ One seasoned wine veteran even noted of Palmaz Vineyard's underground labyrinth, "There's this new

114. See, e.g., Duff, *supra* note 33; Laube, *supra* note 73; Crabbe, *supra* note 104.

winery in the Napa Valley that has to be seen to be believed!"¹¹⁵ Similarly, aesthetically pleasing, above-ground vineyards that have comported with the local ordinances, such as Neibaum-Coppola and Opus, will also draw tourists who want to experience the stunning locations and scenic views afforded by these decidedly more traditional wineries. Moreover, those vineyards that have above-ground operations may ultimately increase their credibility with both tourists (in terms of marketing) and local neighbors (in terms of land preservation) by donating portions of their Elysian fields to the Napa Valley Land Trust. Such was the case with Pahlmeyer Vineyards, as the decision to donate a swathe of land to the Agricultural Preserve ultimately won Pahlmeyer, previously known for his foul mouth and aggressive personality, admiration amongst some segments of the community.¹¹⁶

These creative solutions allow cave-based wineries to employ the latest winemaking technology, but also commend (and perhaps should require) those above-ground wineries that donate land to Napa Valley Land Trust and Agricultural Preserve. Such flexible solutions can in fact help the vintners to achieve their twin goals of making Napa's wine the greatest in the world, while also protecting the Napa Valley for future generations. Similarly, the three chief interests of the winemakers are also served.

B. The Interests of the County

In regards to Napa County, it has the unenviable task of serving as middle man between the two warring factions of wineries and local residents. The arbiter and mediator never has the most pleasant role, as witnessed in Napa County finding itself both the plaintiff in lawsuits where it has sued wineries (such as in the Palmaz Vineyard situation), as well as the defendant in lawsuits where neighbors have sued the county for approving plans that allegedly did not conform to state and local environmental ordinances (such as in the Eddy Winery case, as well as an infamous 1999 Sierra Club action that is far beyond the scope of this note to discuss).¹¹⁷

Despite this mediatory stance, Napa also has its own interests in environmentally induced wine disputes. Notably, Napa has a vested interest in promoting tourism as much, if not more so, than the winemakers. Indeed, Napa County's wine industry generated a whopping \$11 billion in tourist-related activities in 2006, while nationwide sales of Napa's wines

115. Gerald D. Boyd, *Palmaz: An Astonishing Napa Winery*, WINE REV. ONLINE, NOV. 6, 2007, http://www.winereviewonline.com/Gerald_Boyd_on_Palmaz_Vineyards.cfm# (last visited Mar. 4, 2009).

116. Crabbe, *supra* note 104.

117. See Kahn, *supra* note 62.

topped out at over \$42 billion.¹¹⁸ It is thus in Napa's interest to promote the continued growth and market of the wine industry. Similarly, Napa County officials - an extraordinarily anti-growth lot - must remain aware of the power of democracy, as in the 2004 election for the Board of Supervisors, one anti-growth, pro-environmental member of the board lost to a pro-growth, pro-winery candidate.¹¹⁹ In the words of George Bachich, chairman of the Napa Valley Land Stewards Alliance, and a committed pro-winery, pro-growth advocate, "There have been continuous attacks on property rights with more and more restrictions."¹²⁰ In order to maintain cogent environmental standards that limit growth and sustain the environment without infuriating a powerful class of Napa citizens comprised mainly of winemakers, Napa County must establish a dialogue that attempts to bridge the gap between the two factions and not alienate either.

However, Napa County also has a duty to its citizens to ensure that tourists do not "over-trample" the local environment and quaint valley towns.¹²¹ Moreover, if Napa allows winery growth and tourism to flourish without any safeguards, then the bucolic nature of the valley that people so enjoy will be lost, and those tourist dollars may well dry up and disappear. Thus, for Napa County's leaders, the interests are fundamentally the same as those first espoused by the leaders of the Agricultural Preserve in 1968: limited development and environmental protection.¹²²

Napa County can continue to achieve these goals by remaining firm in its commitment to limit new housing and winery developments to 1 percent per year.¹²³ Further, Napa County may wish to take a stricter approach in granting approval for above-ground wineries, which are not only more expensive to construct, but also require a much more time-consuming and intensive process that devours county resources and creates environmental problems anew. Despite recent success stories of underground wineries in the vein of Palmaz Vineyards and Georges de Lautrec, Napa County must remain aware of the potentially negative implications that cave-based wineries may have on the environment. Given that the cave-based phenomenon has only just begun within the last three to five years, the long-term effects of such wineries have yet to be experienced. It remains

118. Bill Kisliuk, *Report: Wine Industry Generates \$11 Billion Per Year*, NAPA VALLEY REG., Oct. 30, 2008, available at <http://www.napavalleyregister.com/articles/2008/10/30/news/local/doc4909301fa5102076668467.txt> (last visited Mar. 5, 2009).

119. Carol Pogash, *A Wine Region's Future is Centered on 2 Rivals*, N.Y. TIMES, July 6, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9906E1D6163BF935A35754C0A9629C8B63&sec=&spon=&pagewanted=1> (last visited Mar. 4, 2009).

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

unknown how such sites will affect the quality of soil, groundwater, and run-off. The more immediate effects, such as degradation of oak forests and the potentially disastrous problem of mudslides on barren hillsides stripped of shrubbery by vintners' preparing to burrow inwards and downwards, have already come to fruition. Comprehensive studies concerning the long-term economic and environmental effects may provide a valuable means for both vintners and local residents to assess the value of particular building permit applications and environmental regulations. From there, Napa County officials could establish a dialogue about which methods to keep and which to discard, while also seeking and suggesting new innovations. A formidable task to be sure, but something, alas, which frequently falls upon the peace-keeping moderate.

C. The Interests of the Neighbors

The final layer to this debate, and the one that comprises the true fabric of the argument, are the neighbors. The voices of Louise Dunlap, Chris Malan, and Robert Lichtman serve as just a few of the thousands who share similar concerns. The neighbors, unlike the grape growers and the county, are the least cohesive, most diverse group, yet undoubtedly have the strongest message: environmental sustainability and maintenance. For many, this is not a desire to prohibit small, family owned vineyards from establishing themselves in the Napa Valley, but rather an effort to thwart the development of resorts offering luxurious "grapeseed-oil massages" and Donald Trump-esque golf courses,¹²⁴ cavernous underground wineries with special rooms given over to displaying the owners' collection of Porsches,¹²⁵ and extravagant weekend homes of San Francisco residents modeled on Tuscan villas and Georgian mansions.¹²⁶ Thus, for the neighbors of Napa, the three predominant considerations are maintaining the peaceful nature of the valley, protecting the natural environment from destruction by developers, and limiting growth to ensure that these first two goals are realized.

Just as an analysis of the various permits was necessary to improve the goals of both the winemakers and the county, a similar assessment is required for the neighbors to cogently organize and effectuate their own stance on limiting growth. The above-ground permits may in fact prove more favorable to the neighbors than the cave permits, because the Napa Valley Planning Commission is far less likely to grant above-ground permits.¹²⁷ Further, the above-ground permits necessarily implicate the

124. Kahn, *supra* note 62.

125. Duff, *supra* note 33.

126. Kahn, *supra* note 62.

127. Duff, *supra* note 33.

Viewshed Ordinance in a far more noticeable manner than do the cave permits. For instance, the Viewshed Ordinance's strict requirement that wineries cannot be visible from public roads quite clearly affects above-ground buildings more than cavernous monoliths.¹²⁸ Given these considerations, local neighbors may in fact prefer that the county limit the number of cave permits (which still have detrimental effects on the environment) and instead issue permits for above-ground wineries with the caveat that those vineyards strictly adhere to the Viewshed Ordinance. As various neighbors of the cave-dwellers have noted, digging into the ground requires clearing brush to distinguish property lines, widening roads to enable the various bulldozers to plough into the earth, and destroying vast swathes of oak forest.¹²⁹ Significantly limiting the number of cave wineries and requiring new builders to strictly adhere to the Viewshed Ordinance in constructing above-ground vineyards (which already face stringent numeric restrictions) may substantially decrease growth and improve environmental protection.¹³⁰ Similarly, this would decrease the amount of tourists heading to new wineries, simply because there would be fewer such vineyards to visit. Instead, residents could feel contented in knowing that only the celebrated favorites of Napa Valley such as Beringer, Mondavi, and Neibaum-Coppola would continue to attract vast amounts of traffic.

Yet as with all assessments, the neighbors must remain wary and recognize that this solution does not end all problems. In fact, some wineries may receive above-ground permits because they promise to make use of natural materials and remain hidden from view, both of which are central features of the Viewshed Ordinance. Yet the winery itself may be downright bad.¹³¹ Such is the case of Daryl Sattui's self-proclaimed "stupid" winery, Villa Amorosa.¹³² Villa Amorosa is half-above and half-below ground, yet did not violate a single measure of the Viewshed Ordinance.¹³³ Unsurprisingly, such a benign potential vineyard did not arouse the wrath of neighbors when Napa County decided to grant Sattui a construction permit.¹³⁴ What resulted, however, was a winery in the shape of an 89,000-square-foot castle, replete with three floors of wine cellars stored below ground, sixty rooms, and a 1,000-square-foot medieval torture chamber displaying maces, manacles, and racks acquired by the owner while in

128. Viewshed Protection Ordinance, *supra* note 61.

129. Jennifer Rofe, *From the Ground Up: An Inside Look at Winery Construction*, WINES & VINES, Apr. 1, 2002, at 34.

130. *Id.*

131. Viewshed Protection Ordinance, *supra* note 61.

132. Suein L. Hwang, *These Cave Dwellers Have Lots of Money, As Wine Cellars Prove*, WALL ST. J., Dec. 26, 2001, at A1.

133. *Id.*

134. *Id.*

Europe.¹³⁵ Yet the material to construct the castle was completely natural - built by hand with supplies available to fourteenth-century peasants living in feudal Europe - and thus adhered to the Viewshed Ordinance.¹³⁶ The end-result is a magnificent above-ground medieval castle constructed of 350,000 handmade European bricks complemented by a drawbridge, parapets, and loggia.¹³⁷ The underground portions of the winery include the winemaking equipment, wine cellars, and requisite dungeon.¹³⁸ Hence, neighbors should be aware that even if the plans of a vineyard (whether above or below-ground) promise not to harm the local streams and oak forests, widen roads and degrade hillsides, frightening consequences can result.

Such an outcome is what makes the current situation in Napa Valley so difficult for the neighbors, particularly given that many possess neither the extraordinary wealth enjoyed by the vineyard owners, nor the influential political connections of the local county officials.¹³⁹ Their voice thus remains the weakest, particularly when one considers the numerous wineries granted building permits over the objections of neighbors.¹⁴⁰ Indeed, common consensus holds that in battles between neighbors and wineries, the latter usually wins.¹⁴¹

Yet the neighbors may still be able to win the wars of the three kingdoms. Given that Napa's residents have always proved immensely innovative in effectuating their aims, particularly in the establishment of the Agricultural Preserve, the Land Trust of Napa Valley, and the Watershed Task Force, it would serve them well to establish a citizens' council to review building permits and give neighborly insight as to how construction projects should continue.¹⁴² This coalition could then report its findings to both the Napa Valley Vintners' Association, as well as the Napa County Planning Commission, thereby opening a dialogue in which all three elements of this tangled web of wine could participate. Such open discussions are likely to best fit and further the goals of all three factions in this ongoing dispute set amongst the vines of Napa County.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Kahn, *supra* note 62.

140. Nathan Crabbe, *Calistoga Winery Wins Approval*, NAPA VALLEY REG., Aug. 22, 2002, available at <http://www.napavalleyregister.com/articles/2002/08/22/news/export40992.txt> (last visited Mar. 6, 2009).

141. Duff, *supra* note 33.

142. See, e.g., Napa Valley Vintners Association, *Land Trust of Napa County* (1976), available at http://www.napavintners.com/about/ab_2_trust.aspx#landtrust (last visited Mar. 4, 2009).

IX. New Horizons: The Future of Winemaking in the Past?

Should the wineries, Napa County officials, and local residents implement such discussions, reforms in the vein of the Agricultural Preserve and Land Trust may once again flourish. Alternatively, just as the development of new technology allowed Pahlmeyer and the Palmazes to construct underground state-of-the-art wineries invoking the latest techniques in winemaking as pioneered by the Italians, perfected by the French, and implemented by the Americans, so too might new technological advances ultimately alleviate the burden of wineries on the environment. In this manner, the goals of all three factions may well be resolved, as the county could continue to restrict winery development in order to protect the environment (thereby placating the neighbors), while also limiting the number of permits for new vineyards in order to keep the supply low and the demand high (thereby placating the established vintners). Only time will tell what the future holds, but for the present, one thing is certain: The various factions must work together in an effort to revise the existing laws so as to comport with the goals of each group. This occurred before, with the Agricultural Preserve in 1968, as well as with the passage of various acts and ordinances during the 1970s, 1980s, and 1990s. There is nothing to say that in the 2000s, further developments and accords could not be reached.

Another possibility, and one that contradicts state-of-the-art technology, looks to the past in order to produce what is reputed to be very, very good wine. In 2007, Dave Del Dotto, the owner of Del Dotto Vineyards, began to make wine the old-fashioned way, with terra cotta amphorae purchased in Tuscany.¹⁴³ Del Dotto maintains that until the eighteenth century, wine was routinely fermented in amphorae much like the 300-year-old Tuscan vessels he bought.¹⁴⁴ Exceedingly economical, the amphorae cost a mere \$15,000 apiece, far less than the \$500,000 apiece stainless steel fermenters found in the newest wineries.¹⁴⁵ Further, the production process itself does not require conveyor belts or elevators into vast caverns located far below the California soil. Rather, Del Dotto uses plastic and beeswax to cover the jars, just like the ancient Etruscans did.¹⁴⁶ The clay in the amphora softens the tannins, which aid in fermenting the white wine.¹⁴⁷ Such a back-to-basics process also necessarily ensures that sulfites do not infiltrate the wine, which can frequently occur in modern wine production.¹⁴⁸ The ancient

143. Alan Goldfarb, *Ancient Wine Technology: Del Dotto Winery to Release an Amphora-Fermented Cabernet*, WINES & VINES, July 17, 2007, at 51.

144. *Id.*

145. *Id.*; see also, Duff, *supra* note 33.

146. Goldfarb, *supra* note 143.

147. *Id.*

148. *Id.*

way of winemaking also takes up far less space, as each terra cotta container is four feet high and six feet wide, thereby making storage either in a cave or above ground relatively simple.¹⁴⁹ It goes without saying that such methods easily comply with Napa County's regulations, and it is difficult to imagine either neighbors or the Napa County Planning Commission refusing Del Dotto a permit to dig small holes in the earth to bury the amphorae in accordance with ancient tradition.¹⁵⁰ And, the result of such inexpensively fermented, space-efficient, regulation-abiding wine? According to a friend of Del Dotto's, "It's got a primordial character. You get the feeling it's part of the earth. The smell is totally different from stainless steel or wood. It's more pure, and real grapey of what the variety is; it accentuates the variety."¹⁵¹

Although Del Dotto's antiquarian method of winemaking may not prove as fruitful as new, state-of-the-art methods favored by Opus, Georges de Lautrec, and others, the aphorism, "what is old is new again" does have particular resonance here. And, in this instance at least, the past seems to provide a far less contentious methodology for winemaking than the present. Wine for thought.

149. *Id.*

150. *Id.*

151. *Id.*
